

TRANSMITTAL SLIP		3-13-87
TO: C/PB/PPG/AS		
ROOM NO. 1511	BUILDING	
REMARKS:		
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FROM: OCA/LEG		
ROOM NO. 7B14	BUILDING HQ	

100TH CONGRESS  
1ST SESSION

# H. R. 1212

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1987

Mr. WILLIAMS (for himself, Mr. HAWKINS, Mr. JEFFORDS, Mr. FORD of Michigan, Mr. CLAY, Mr. BIAGGI, Mr. MURPHY, Mr. KILDEE, Mr. MARTINEZ, Mr. OWENS of New York, Mr. BOUCHER, Mr. HAYES of Illinois, Mr. PERKINS, Mr. DYMALLY, Mr. PENNY, Mr. ATKINS, Mr. TAUKE, Mr. HENRY, Mr. BROOKS, Mr. MCKINNEY, Mr. RODINO, Mr. COURTER, Mr. KASTENMEIER, Mr. LEVIN of Michigan, Mr. HOWARD, Mr. EDWARDS of California, Ms. OAKAR, Mr. CONYERS, Mr. BERMAN, Mr. LOWRY of Washington, Mr. LELAND, Mr. SCHEUER, Mr. OBERSTAR, Mr. FAUNTROY, Mr. STAGGERS, Mr. ROBINSON, Mr. KANJORSKI, Mr. FLORIO, Mr. MARKEY, Mrs. BENTLEY, Mr. JONES of North Carolina, Mr. ANDREWS, Mr. MRAZEK, Mr. SCHUMER, Mr. GEPHARDT, Mr. EVANS, Mr. LEACH of Iowa, Mrs. BOXER, Mr. SYNAR, Mr. CONTE, Mr. GLICKMAN, Mr. BORSKI, Mr. HERTEL, Mr. RAHALL, Mr. DURBIN, Mr. AKAKA, Mr. VISCLOSKEY, Mr. GAYDOS, Mr. RICHARDSON, Mr. RANGEL, Mr. TOWNS, Mr. BOEHLERT, Mr. FAZIO, Mr. RIDGE, Mr. ACKERMAN, Mr. WHEAT, Mr. DELLUMS, Mr. FEIGHAN, Mrs. COLLINS, Mr. FRANK, Mr. KOLTER, Mr. DIXON, Mr. DAVIS of Michigan, Mrs. JOHNSON of Connecticut, Mr. CARR, Mr. SKELTON, Mr. CROCKETT, Mr. MORRISON of Connecticut, Mr. BROWN of California, Mr. SMITH of Iowa, Mr. SAVAGE, Mr. STOKES, Mr. GRAY of Illinois, Mr. BOSCO, Mr. WALGREEN, Mr. GEJDENSON, Mr. DONNELLY, Mr. LEVINE of California, Mr. GONZALEZ, Mr. TRAFICANT, Mr. STARK, Mr. WOLPE, Mr. GRAY of Pennsylvania, Mr. NEAL, Mr. STUDDS, Mr. SABO, Mr. TORRES, Mr. OLIN, Ms. KAPTUR, Mr. MATSUI, Mr. GARCIA, Mr. SIKORSKI, Mr. BONIOR of Michigan, Mr. WISE, Mr. GUARINI, Ms. SNOWE, Mr. BUSTAMANTE, Mrs. SCHROEDER, Mr. AU COIN, Mr. SWIFT, Mr. RINALDO, Mr. VENTO, Mr. MANTON, Mr. KOSTMAYER, Miss SCHNEIDER, Mr. BONKER, Mr. DYSON, Mr. MINETA, Mr. HAMILTON, Mr. MCDADE, Mr. FOGLIETTA, Mr. DORGAN of North Dakota, Mr. NIELSON of Utah, Mr. ASPIN, Mr. ST GERMAIN, and Mr. BOLAND) introduced the following bill; which was referred to the Committee on Education and Labor

# A BILL

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Employee Polygraph  
5       Protection Act".

6       **SEC. 2. PROHIBITIONS ON LIE DETECTOR USE.**

7       It shall be unlawful for any employer engaged in com-  
8       merce or in the production of goods for commerce—

9               (1) directly or indirectly, to require, request, sug-  
10       gest, or cause any employee or prospective employee  
11       to take or submit to any lie detector test;

12              (2) to use, accept, refer to, or inquire concerning  
13       the results of any lie detector test of any employee or  
14       prospective employee;

15              (3) to discharge, dismiss, discipline in any manner,  
16       or deny employment or promotion to, or threaten to  
17       take any such action against—

18                   (A) any employee or prospective employee  
19       who refuses, declines, or fails to take or submit to  
20       any lie detector test; or

1 (B) any employee or prospective employee on  
2 the basis of the results of any lie detector test;  
3 or

4 (4) to discharge or in any manner discriminate  
5 against an employee or prospective employee  
6 because—

7 (A) such employee or prospective employee  
8 has filed any complaint or instituted or caused to  
9 be instituted any proceeding under or related to  
10 this Act;

11 (B) such employee or prospective employee  
12 has testified or is about to testify in any such pro-  
13 ceeding; or

14 (C) of the exercise by such employee, on  
15 behalf of himself or others, of any right afforded  
16 by this Act.

17 **SEC. 3. NOTICE OF PROTECTION.**

18 The Secretary of Labor shall prepare, have printed, and  
19 distribute a notice that employers are prohibited by this Act  
20 from using a lie detector test on any employee or prospective  
21 employee. Upon receipt by the employer, such notice shall be  
22 posted at all times in conspicuous places upon the premises of  
23 every employer engaged in commerce or in the production of  
24 goods for commerce.

1 SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.

2 (a) IN GENERAL.—The Secretary of Labor shall—

3 (1) issue such rules and regulations as may be  
4 necessary or appropriate for carrying out this Act;

5 (2) cooperate with regional, State, local, and other  
6 agencies, and cooperate with and furnish technical as-  
7 sistance to employers, labor organizations, and employ-  
8 ment agencies to aid in effectuating the purposes of  
9 this Act; and

10 (3) make investigations and inspections and re-  
11 quire the keeping of records necessary or appropriate  
12 for the administration of this Act.

13 (b) SUBPENA AUTHORITY.—For the purpose of any  
14 hearing or investigation under this Act, the Secretary shall  
15 have the authority contained in sections 9 and 10 of the Fed-  
16 eral Trade Commission Act (15 U.S.C. 49, 50).

17 SEC. 5. ENFORCEMENT PROVISIONS.

18 (a) CIVIL PENALTIES.—(1) Subject to paragraph (2),  
19 whoever violates this Act may be assessed a civil penalty of  
20 ~~not~~ more than \$10,000.

21 (2) In determining the amount of any penalty under  
22 paragraph (1), the Secretary shall take into account the pre-  
23 vious record of the person in terms of compliance with this  
24 Act and the gravity of the violation.

25 (3) Any civil penalty assessed under this subsection shall  
26 be collected in the same manner as is required by subsections

1 (b) through (e) of section 503 of the Migrant and Seasonal  
2 Agricultural Worker Protection Act (29 U.S.C. 1853) with  
3 respect to civil penalties assessed under subsection (a) of such  
4 section.

5 (b) INJUNCTIVE ACTIONS BY THE SECRETARY.—The  
6 Secretary may bring an action to restrain violations of this  
7 Act. The district courts of the United States shall have juris-  
8 diction, for cause shown, to issue temporary or permanent  
9 restraining orders and injunctions to require compliance with  
10 this Act.

11 (c) PRIVATE CIVIL ACTIONS.—(1) An employer who  
12 violates the provisions of this Act shall be liable to the em-  
13 ployee or prospective employee affected by such violation. An  
14 employer who violates the provisions of this Act shall be  
15 liable for such legal or equitable relief as may be appropriate,  
16 including (without limitation) employment, reinstatement,  
17 promotion, the payment of wages lost, and an additional  
18 amount as consequential damages.

19 (2) An action to recover the liability prescribed in para-  
20 graph (1) may be maintained against the employer in any  
21 Federal or State court of competent jurisdiction by any one  
22 or more employees<sup>y</sup> for or in behalf of himself or themselves  
23 and other employees similarly situated.

1       (3) The court shall award to a prevailing plaintiff in any  
2 action under this subsection the reasonable costs of such  
3 action, including attorneys' fees.

4 **SEC. 6. NO APPLICATION TO GOVERNMENTAL EMPLOYERS.**

5       The provisions of this Act shall not apply with respect  
6 to the United States Government, a State or local gov-  
7 ernment, or any political subdivision of a State or local  
8 government.

9 **SEC. 7. DEFINITIONS.**

10       As used in this Act—

11           (1) the term "lie detector test" ~~includes~~ any ex-  
12 amination involving the use of any polygraph, decepto-  
13 graph, voice stress analyzer, psychological stress eval-  
14 uator, or any other similar device (whether mechanical,  
15 electrical, or chemical) which is used, or the results of  
16 which are used, for the purpose of detecting deception  
17 or verifying the truth of statements;

18           (2) the term "employer" includes <sup>\*</sup>any ~~person~~  
19 acting directly or indirectly in the interest of an em-  
20 ployer in relation to an employee or prospective em-  
21 ployee; and

22           (3) the term "commerce" has the meaning provid-  
23 ed by section 3(b) of the Fair Labor Standards Act of  
24 1938 (29 U.S.C. 203(b)).

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**1 SEC. 8. EFFECTIVE DATE.**

**2       This Act shall take effect 6 months after the date of its**  
**3 enactment.**

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1 any contractor of such department in connection with such  
2 activities.

3 (2) Nothing in this Act shall be construed to prohibit  
4 the administration, in the performance of any intelligence or  
5 counterintelligence function, of any lie detector test to--

6 (A)(i) any individual employed by, or assigned or  
7 detailed to, the National Security Agency or the Central  
8 Intelligence Agency, (ii) any expert or consultant under  
9 contract to the National Security Agency or the Central  
10 Intelligence Agency, (iii) any employee of a contractor  
11 of the National Security Agency or the Central  
12 Intelligence Agency, or (iv) any individual applying for  
13 a position in the National Security Agency or the Central  
14 Intelligence Agency; or

15 (B) any individual assigned to a space where  
16 sensitive cryptologic information is produced, processed,  
17 or stored for the National Security Agency or the Central  
18 Intelligence Agency.

19 (c) EXEMPTION FOR FBI CONTRACTORS.--Nothing in this Act  
20 shall be construed to prohibit the administration, in the  
21 performance of any counterintelligence function, of any lie  
22 detector test to an employee of a contractor of the Federal  
23 Bureau of Investigation of the Department of Justice who is  
24 engaged in the performance of any work under the contract  
25 with such Bureau.